(25,379)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 549.

METROPOLITAN STATE BANK, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 21, 1916.

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a UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Sixth Day of October, in the Year of our Lord One Thousand Nine Hundred and Fifteen, within and for the State of Illinois.

Present: William M. Farmer, Chief Justice; Justice James H. Cartwright, Justice Orrin N. Carter, Justice Frank K. Dunn, Justice George A. Cooke, Justice Charles C. Craig, Justice Warren W. Duncan; Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered, to-wit, on the Fifteenth day of September, A. D. 1915, the same being one of the days in vacation before the term of Court aforesaid a record of the proceedings in the Circuit Court of Cook County was filed by Metropolitan State Bank, appellant, in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

1 10300, 68.

Record to Supreme Court.

Gen. No., B-8707.

PEOPLE ex Rel. P. J. LUCEY, etc.,
vs.
METROPOLITAN STATE BANK.

Filed Sep. 11, 1915.

CHAS. W. VAIL,
Clerk of Supreme Court.

2 UNITED STATES OF AMERICA,
State of Illinois, Cook County, ss:

Pleas before the Honorable Thomas G. Windes, one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and held at Chicago, in the Court House, in said County and State, on the third Monday (being the 21st day) of June, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States the one hundred and thirty-ninth.

Present: Honorable Thomas G. Windes one of the Judges of the Circuit Court of Cook County, State of Illinois; Maclay Hoyne, State's Attorney; John E. Traeger, Sheriff.

Attest:

JOHN W. RAINEY, *Clerk.*

Be it remembered that heretofore, to-wit, on the 17th day of February A. D. 1915 a certain Information was filed in the office of the Clerk of said Court, in words and figures following to-wit:

3 *Information in Equity.*

To the Honorable Judges of the Circuit Court of the County of Cook, in the State of Illinois, in Chancery Sitting:

Patrick J. Lucey, Attorney General of the State of Illinois, files and exhibits in this court this information for and on behalf of the People of the State of Illinois, and respectfully informs the court that on, to-wit, the twelfth day of December, 1913, there was presented to the Auditor of Public Accounts of the State of Illinois, and on that date filed in his office, a written application in due form of law signed and acknowledged by the following named persons with the addresses indicated, namely:

S. A. Brenza, M. D., 2316 Morgan Street, Morgan Park, Illinois;
Walter B. Meilukas, 2417 Ebud Street, Morgan Park, Illinois;
John B. Brenza, 4608 Ashland Ave., Chicago, Illinois;
James A. Gorman, 2812 Princeton Ave., Chicago, Illinois;
Claude Dyckman, 529 No. Long Avenue, Chicago, Illinois,

for permission to organize a bank or banking association under the act of the State of Illinois entitled, "An Act concerning corporations with banking powers," approved June 16, 1887, in force December 6, 1888, and all acts amendatory thereto, and in said application it was stated, among other things:

"The name of said association shall be Metropolitan State Bank."

"The business of said association shall be carried on at No. 2347 Morgan Avenue, Village of Morgan Park, county of Cook and State of Illinois, the city not exceeding five thousand population."

"The capital stock shall be twenty-five ($25,000) thousand dollars,"

which said application was in words, figures and characters as follows, to-wit:

STATE OF ILLINOIS,
Cook County, ss:

"To the Auditor of Public Accounts:

4 "We, the undersigned, hereby make application for permission to organize a bank or banking association, under an act of the General Assembly of the State of Illinois, entitled "An act Concerning corporations with Banking Powers," approved June 16, 1887, in force December 6, 1888, and all acts amendatory thereto; and for the purpose of such organization we hereby state as follows, to-wit:

1. The name of such association shall be Metropolitan State Bank.
2. The business of said association shall be carried on at No. 2347 Morgan Avenue, Village of Morgan Park, County of Cook and State of Illinois, the city not exceeding Five thousand population.
3. The capital stock shall be twenty-five ($25,000) thousand dollars.
4. The amount of each share shall be one hundred dollars.
5. The number of shares shall be (250) Two hundred fifty shares.
6. The duration of the association shall be Ninety-nine (99) years.

Name.		Address.
S. A. BRENZA, M. D.	[SEAL.]	2316 Morgan St., Morgan Park, Ill.
WALTER B. MEILUKAS.	[SEAL.]	2417 Ebuda St., Morgan Park, Ill.
JOHN B. BRENZA.	[SEAL.]	4608 Ashland Ave., Chicago, Ill.
JAMES A. GORMAN.	[SEAL.]	2812 Princeton Ave., Chicago, Ill.
CLAUDE DYCKMAN.	[SEAL.]	529 No. Long Ave, Chicago, Ill.

STATE OF ILLINOIS,
Cook County, ss:

I, Edmund Marshall Amberg, a Notary Public in and for the County and State aforesaid, do hereby certify that on the eleventh day of December, A. D. 1913, personally appeared before me S. A. Brenza, M. D., Walter B. Meilukas, John B. Brenza, James A. Gorman, and Claude Dyckman, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that — executed the same for the purpose therein set forth.

In Witness Whereof, I have hereunto set may hand and seal the day and year above written.

[SEAL.] EDMUND MARSHALL AMBERG,
Notary Public.

5 & 6 On the back of said application were the following endorsements: "Application for permission to organize Metro-

politan State Bank, located at Morgan Park, Ill. filed in Auditor's Office Dec. 12, 1913, James J. Brady, Auditor, P. A."

That on said twelfth day of December, 1913 the Auditor of Public Accounts, pursuant to said application and said act, issued and delivered to said applicants a permit to organize a bank or banking association, under said act, with a capital stock of $25,000.00 in the said village of Morgan Park, which said permit was and is in words, figures and characters as follows, to-wit:

State of Illinois, Auditor's Office.

SPRINGFIELD, December 12, 1913.

"To all to whom these presents shall come, Greeting:

"Whereas, the persons hereinafter named have this day filed in the office of the Auditor of Public Accounts, duly signed and acknowledged according to law, an application for permission to organize a Bank or Banking Association, under the provisions of an act of the General Assembly of the State of Illinois, entitled "An Act Concerning Corporations with Banking Powers, approved June 16, 1887, in force December 6, 1888, as amended by act approved June 3, 1889, in force November 29, 1890, and by act approved June 4, 1897, in force November 28, 1898 and by act approved June 3, 1907 in force November 24, 1908;

"Now, therefore, I, James J. Brady Auditor of Public Accounts of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by the act aforesaid, do hereby authorize, empower and grant permission to S. A. Brenza, M. D., Walter B. Meilukas, John B. Brenza, James A. Gorman, Claude Dyckman, the persons whose names are signed to the before mentioned application to organize a Bank or Banking Association to be known as Metropolitan State Bank, to be located at Morgan Park, County of Cook and State of Illinois, with a capital stock of Twenty-five Thousand dollars, divided into Two Hundred fifty shares of one hundred dollars each.

"The duration of said association to be ninety nine years.

"In testimony whereof, I hereunto subscribe my name and affix the seal of my office, the day and year first above written.

[OFFICIAL SEAL.] JAMES J. BRADY,
Auditor of Public Accounts.

7 Your orators further represent that on the thirty-first day of March 1914, the directors elected by the subscribers to the capital stock of said proposed corporation returned to the Auditor of Public Accounts their report of the organization of said bank, showing the names of the directors or managers elected to serve for one year, and until their successors should be elected, the names of the officers appointed and employed, that the capital stock of $25,000.00 had been fully subscribed and paid in, together with the oath of the directors or managers elect, and a list of the stockholders, which said report, oath of directors and list of stockholders are in words, figures and characters as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

"Alpjonsus Lauraitis, Frank Grzybowski, Marcela Brenza, Sylvester A. Brenza, John B. Brenza, Anton Brozis, Jonas Krotkas, being severally duly sworn, each for himself says that he is a director of the Metropolitan State Bank elected at a lawful meeting of its stockholders held at Chicago, Illinois, on the Thirteenth day of March, 1914.

"The deponents further say that as said directors they have organized for the purpose of carrying on the business of said association by the election of John B. Brenza as President, and have appointed the following officers to-wit: Alphonsus Lauraitis as Cashier, Jonas Krotkas as Secretary, Sylvester A. Brenza as Vice-President.

"The deponents further says that the capital stock of said association is twenty-five thousand dollars, and the surplus of said association is Five thousand dollars, and that all of said capital and surplus is actually paid in in cash and no part thereof is in notes or pledges of any description; and that said capital and surplus is now in the hands of the proper officers of said association, as above set forth, and is to be used by them solely in the legitimate business of the association when the same shall be opened for banking.

ALPHONSUS LAURAITIS.
FRANK GRZYBOWSKI.
MARCELA BRENZA.
SYLVESTER A. BRENZA.
JOHN B. BRENZA.
JONAS KROTKAS.
ANTON BROZIS.

"Subscribed and sworn to by each deponent this 20th day of March 1914, before me.

[SEAL.] JAMES R. CARNEY,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

8 "Alphonsus Lauraitis, Frank Grzybowski, Marcela Brenza, Sylvester A. Brenzo, John B. Brenza, Anton Brozis, Jonas Krotkas, the Directors of Metropolitan State Bank, located at Morgan Park, Illinois, each for himself, solemnly swears that he will, so far as the duty devolves on him, dilgently and honestly administer the affairs of such bank or association, and will not knowingly violate or willingly permit to be violated any of the provisions of the act under which the said association is organized; and that he is the owner, in good faith and in his own right, of ten (10) shares of the capital

stock of this bank and that the same is not hypothecated or in any way pledged as security for any loan or debt.

ALPHONSUS LAURAITIS.
FRANK GRZYBOWSKI.
MARCELA BRENZA.
SYLVESTER BRENZA.
JOHN B. BRENZA.
JONAS KROTKAS.
ANTON BROZIS.

Subscribed and sworn to before me by the above named Alphonsus Lauraitis, Frank Grzybowski, Marcela Brenza, Sylvester Brenza, John B. Brenza, Jonas Krotkas, Anton Brozis, this 20th day of March, 1914.

[SEAL.] JAMES R. CARNEY,
Notary Public.

List of Stockholders of the Metropolitan State Bank, Located at Morgan Park, Illinois, Required to be Furnished the Auditor of Public Accounts under the Provisions of "An Act Concerning Corporations with Banking Powers," Approved June 16, 1887, *and All Acts Amendatory Thereto.*

Names of stockholders.	Residence.	Shares.	Amount.
Paul N. Balentis 3261	Chicago	6	600.00
Alphonsus Lauraitis	Chicago, Ill.	10	1,000.00
Rosa Warnagis Zlikas	Chicago, Ill.	2	200.00
Frank Gudas	Chicago, Ill.	3	300.00
Anton Jankowski	Chicago, Ill.	2	200.00
Martin Z. Kadzieskis	Chicago, Ill.	4	400.00
Pater Sharpetis	Chicago, Ill.	1	100.00
Wm. Sakauicz	Chicago, Ill.	4	400.00
Anton Brozis	Cicero, Ill.	10	1,000.00
Joseph Mekelinas	Chicago, Ill.	3	300.00
Frank Grzybowski	Morgan Park, Ill. .	12	1,200.00
Marcela Brenza	Chicago, Ill.	161	16,100.00
Boleslaw R. Kizlowski	Chicago, Ill.	1	100.00
S. A. Brenza	Morgan Park, Ill. .	10	1,000.00
Claude Dyckman	Chicago, Ill.	1	100.00
John B. Brenza	Chicago, Ill.	10	1,000.00
Jonas Krotkas	Chicago, Ill.	10	1,000.00
		250	25,000.00

That on the back of said report was the following endorsement: "Affidavit of Directors as to Organization, Officers. and payment of Capital and Surplus of the Metropolitan State Bank, located at Morgan Park, Ill. Filed in Auditor's Office Mar. 31, 1914. James J. Brady, Auditor."

9 And on the back of said oath of directors the following endorsement:

Oath of Directors of the Metropolitan State Bank, Located at Morgan Park, Ill. Filed in Auditor's Office, Mar. 31, 1914. James J. Brady, Auditor.

And on the back of the list of stockholders the following endorsement, together with a certificate of the cashier elect of the correctness of said list of stockholders:

"Certified List of Stockholders of the Metropolitan State Bank, Morgan and Western Ave., location Morgan Park, Ill. Filed in Auditor's Office, Mar. 31, 1914. James J. Brady, Auditor."

Your orators further represent that thereupon, after having examined into the affairs of said organization and said bank and being satisfied that the capital stock of $25,000.00 had all been subscribed and fully paid in and that the association had the full amount thereof dedicated to the business, and the reasonable expenses of said examination having been paid to him, the Auditor of Public Accounts gave said bank a certificate, under seal, authorizing them to commence the business designated in section 1 of said act, and thereafter and on the Sixth day of April, 1914, said certificate and permit, duly certified by said Auditor of Public Accounts, was filed and recorded in the office for the recording of deeds in the County of Cook, in the State of Illinois, and thereupon said Metropolitan State Bank became and was duly authorized to proceed to the business for which it was organized and incorporated, at the said village of Morgan Park and not elsewhere.

Your orators further represent that section 2 of said Act provides, among other things:

"When any association of persons desire to avail themselves of the provisions of this act, they may apply to the Auditor for permission to organize, stating their place of business, the amount of capital and name under which they desire to organize, and the time for which such association shall continue, which statement shall be under their hands and seals, and acknowledged before some officer authorized by law to acknowledge deeds; and the Auditor shall issue to them a permit to organize."

And section 11 of said act provides, among other things:

"Banks and banking associations may be organized under the provisions of this act in all cities, towns and villages with a minimum capital stock according to the population of such cities, towns and villages as follows:

"In all cities, towns and villages of not exceeding five thousand inhabitants, of twenty five thousand dollars.

"In all cities, towns and villages of over five thousand inhabitants and less than ten thousand inhabitants, of fifty thousand dollars.

"In all cities, towns and villages of ten thousand inhabitants and less than fifty thousand inhabitants, of one hundred thousand dollars.

"In all cities and towns of fifty thousand inhabitants or more, of two hundred thousand dollars.

That the application for a permit to organize said bank made pursuant to the provisions of said section 2, was signed and acknowledged by the above named applicants and recited, among other

things, that "The business of said association shall be carried on at No. 2347 Morgan Avenue, Village of Morgan Park, County of Cook, and State of Illinois, the city not exceeding five thousand population," and the permit issued by the Auditor of Public Accounts of the State of Illinois, pursuant to said application and in accordance with said section 2, after reciting said application, expressly provided:

"Now, therefore, I, James J. Brady, Auditor of Public Accounts of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by the act aforesaid, do hereby authorize, empower and grant permission to S. A. Brenza, M. D., Walter B. Meilukas, John B. Brenza, James A. Gorman, Claude Dyckman, the persons whose names are signed to the before mentioned application to organize a bank or banking association, to be known as Metropolitan State Bank, to be located at Morgan Park, County of Cook and State of Illinois, with a capital stock of Twenty-Five thousand dollars.

That said act, in section 11 thereof, provides and requires that banks or banking associations organized thereunder to com-
11 mence and carry on the business described in section 1 of said act in cities of 50,000 or more inhabitants shall have a minimum capital stock of $200,000, and that by said section 11 it is only in cities of not exceeding 5,000 inhabitants that a bank or banking association may be organized under said act with a capital stock of but $25,000; and so your orators represent that said act impliedly prohibits a corporation with banking powers or banks or banking associations organized under said act with a capital stock of but $25,000.00 from carrying on the business described in section 1 of said act—that is to say, of discount and deposit, buying and selling exchange, loaning money on personal and real security and doing a general banking business (except the issuing of bills to circulate as money) in a city with a population exceeding 5,000 inhabitants.

Your orators further represent that the city of Chicago is a city with a population of more than 50,000 inhabitants, and in fact, at all times herein named, had and now has a population of about 2,500,000 inhabitants, and under the provisions of said act a bank or banking association organized thereunder, in order to lawfully carry on the business contemplated by said act in said city of Chicago, would have to have a capital stock of at least $200,000.

Your orator further represents that notwithstanding the premises, said Metropolitan State Bank, without any warrant, charter or grant contrary to the terms and conditions of the said charter and articles of incorporation of said bank and contrary to law, now threatens to and will, unless restrained and enjoined by this court, commence and carry on the business of banking—that is to say, the business of discount and deposit, buying and selling exchange, loaning money on personal and real estate security and doing a general banking business—at, to-wit, No. 809 West Thirty fifth Street, in the city of Chicago, in the County of Cook, in the state of Illinois, a location or place of business other than that named in its said charter and ar-

ticles of incorporation and wholly outside of, and far removed
12 from, the said village of Morgan Park and the original site thereof and in a city, location or place of business of more than 50,000 population; and threatens to and will, unless restrained by the order and injunction of this court, in the manner and by the means aforesaid, abuse, misuse and exceed its said powers, rights, franchises, privileges and grants as a corporation with banking powers under the said act and in violation thereof.

For as much therefore as the said People of the State of Illinois are without remedy in the premises, except by information in equity, and to the end that the said Metropolitan State Bank, which is made a party defendant to this information, may be required to make full, true and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that upon final hearing, said Metropolitan State Bank be perpetually restrained and enjoined by the decree of this court from commencing or carrying on its business as a bank or banking association under said act—that is to say, the business of discount and deposit, buying and selling exchange, loaning money on personal and real estate security and doing a general banking business, and from thereby exercising its powers, franchises and privileges as a bank or banking association in the said City of Chicago or at any place or location other than the said village of Morgan Park or the original site thereof, the place of business, location and village named in its said charter and articles of incorporation; and for such other further or different relief in the premises as to you- Honor shall seem meet and proper.

May it please your Honor to grant the writ of Summons in chancery, directed to the sheriff of said County of Cook, commanding him that he summons the defendant, Metropolitan State Bank, to appear before the said court on the first day of the next term thereof, to be held at the court house, in the city of Chicago, in the county of Cook aforesaid, and then and there to answer this bill, etc.

13 And may it please your Honor to grant unto your orator the People's writ of injunction, to be directed to the said Metropolitan State Bank, restraining it from locating its said bank and from commencing and carrying on the business of banking and from exercising its powers, franchises and privileges as a bank or banking association in the said City of Chicago, or at any place or location other than that named in its charter or articles of incorporation, namely, the village of Morgan Park or the original site thereof, until the further order of said court.

PATRICK J. LUCEY,
Attorney General of the State of Illinois.

STATE OF ILLINOIS,
County of Sangamon, ss:

John J. Burke, of lawful age, being first duly sworn, on his oath says that he is Chief Clerk of the banking department of the office of the Auditor of Public Accounts of the State of Illinois, that he has read and knows the contents of the foregoing information, and

the the matters and things therein stated and alleged are true in substance and in fact.

JOHN J. BURKE.

Subscribed and sworn to before me this 15th day of February, A. D. 1915.

[SEAL.] JAMES J. RILEY,
Notary Public.

14 Thereupon on the same day to-wit, on the 17th Day of February A. D. 1915 a certain People's Writ of Summons issued out of the Office of the Clerk of said Court and under the Seal thereof directed to the Sheriff of Cook County to execute which writ together with the return of the Sheriff thereon endorsed are in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command that you summons Metropolitan State Bank if it shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the term thereof, to be holden at the Court House in the City of Chicago, in said Cook County on the third Monday of March A. D. 1915, to answer unto People of the State of Illinois ex rel. Patrick J. Lucey, Attorney General in their certain information in equity filed in said Court, on the Chancery *said* thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, John W. Rainey, Clerk of our said Court and the Seal thereof, at Chicago, in said County, this 17th day of February A. D. 1915.

[SEAL.] JOHN W. RAINEY, *Clerk.*

Pd. 1.75.
M. 1.40.

Served this writ on the within named Metropolitan State Bank, a corporation, by delivering a copy thereof to Julian Brenza, Assistant cashier & clerk of said corporation, this 8th day of March 1915. The President of said corporation not found in my county.

JOHN E. TRAEGER, *Sheriff,*
By AUGUST BERKE, *Deputy.*

15 And afterwards to-wit, on the 19th day of April A. D. 1915 a certain Appearance was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
Cook County, ss:

Circuit Court Thereof to the April Term, A. D. 1915.

PEOPLE ex Rel. P. J. LUCEY
vs.
METROPOLITAN STATE BANK.

Action: Chancery.

We hereby enter appearance of Metropolitan State Bank, a corporation as defendant in the above entitled cause and ourselves as attorney therein.

LYMAN, ADAMS & BISHOP,
Attorneys for Defendant.

Chicago, Ill., April 19th, 1915.

And afterwards to-wit, on the 8th day of May A. D. 1915 a certain Answer was filed in the office of the clerk of said Court, in words and figures following to-wit:

16 *The Answer of the Metropolitan State Bank, Defendant, to the Information in Equity of People of the State of Illinois ex Rel. Patrick J. Lucey, Attorney General.*

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County, April Term, A. D. 1915.

Gen. No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS
vs.
METROPOLITAN STATE BANK.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many *to the many* errors, uncertainties and other imperfections in said Information in Equity contained, for answer thereunto, or to as much or such parts thereof as this defendant is advised it is or are material or necessary for it to make answer unto, answering says:

This defendant admits that a written application for permission to organize a bank was filed in the office of the auditor of public accounts of the state of Illinois on December 12, 1913, as alleged in plaintiff's information.

This Defendant further answering admits that on said 12th day of December, 1913, the auditor of public accounts issued a permit

to organize a bank in the Village of Morgan Park as alleged in plaintiff's information.

17 This defendant further answering admits that the directors elected by the subscribers to the capital stock of the proposed bank duly organized and filed their report thereof, and that the capital stock of twenty-five thousand dollars and the surplus of five thousand dollars was fully subscribed and paid and that all other acts were done in accor-ance with the statute in such instance made and provided, as set forth in plaintiff's information.

This defendant further answering admits that a list of stockholders was duly prepared and filed in accordance with the statute made and provided, and as set forth in plaintiff's information.

This defendant further answering admits that a certificate or charter was duly given to said bank by the auditor of public accounts authorizing said bank to commence the business designated in the banking act, and that thereafter on the 6th day of April 1914, said certificate and permit duly certified by the auditor of public accounts was filed and recorded in the office of the recorder of deeds in the county of cook and the state of Illinois, and thereupon said Metropolitan State Bank? became and was duly authorized to proceed in the business for which it was organized and incorporated as set forth in plaintiff's information.

This defendant further answering state- that said certificate or charter is in words and figures as follows to-wit:

To all to whom these presents shall come, Greeting:

Whereas proper evidence has been filed in the office of the Auditor of Public Accounts, showing the organization of Metropolitan State Bank located at Morgan Park, County of Cook and State of Illinois, under and in accordance with the provisions of "An Act concerning corporation- with banking powers," approved June 16, 1887, in force December 6, 1888, as amended by an act approved June 3, 1889, in force November 29, 1898, and by act approved June 3, 1907, in force November 24, 1908.

And whereas, it appears from the evidence furnished the Auditor required by law, that the capital stock of said association amounting to $25,000.00, and the proposed surplus of said association

18 amounting to Five thousand dollars has been fully paid in, and is now in the custody of the proper officer of said association.

Now therefore, I, James J. Brady, Auditor of Public Accounts of the State of Illinois, by virtue of the power vested in me by the act aforesaid do hereby authorize said Metropolitan State Bank to commec*n*e business as a bank or banking as-ociation under the provisions of said act for the purpose of discount and deposit and to buy and sell exchange and to do a general banking business, excepting issuing bills to circulate as money and with power to loan money on personal and real security and to accept and execute trusts."

This defendant further answering denies that there is any pro-

visions in said charter depriving this defendant of the right to move the location of its bank in the municipality in which it resides.

This defendant further answering states that as soon as it was authorized by James J. Brady, Auditor of Accounts of the State of Illinois under the provisions of the act concerning corporations with banking powers approved June 16, 1887, and *enforce* with admendments thereto on the 24th day of November 1908 to commence business as a bank or banking association under the provisions of said act, immediately thereupon and thereafter and prior to the 7th day of April 1914 said Metropolitan State Bank at No. 2347 Morgan Avenue in the Village of Morgan Park, County of Cook and State of Illinois, engaged in business as banking association for the purpose of discounting and deposit and to buy and sell exchange and to do a general banking business excepting the issuing of bills to circulate as money.

And said Metropolitan State Bank further states that on, to-wit the 6th day of January 1914 certain legal voters of the village of Morgan Park, Illinois of the number of 750 or more desiring to extend the boundary lines of said village of Morgan Park and become and be merged in and become a part of the City of Chicago, a city of greater population *of* Morgan Park, presented *and* petition to the judge of the County Court of Cook County, asking that the question
19 of annexation of the said village of Morgan Park to the City of Chicago, in said County be submitted to the legal voters of the village of Morgan Park; that on to-wit the 6th day of January 1914 said judge of the County Court of Cook County, pursuant to the statute in such case made and provided entered an order or decree submitting the question of the annexation of said village of Morgan Park to the City of Chicago to the voters of the City of Chicago and to the voters of the village of Morgan Park at the next regular annual municipal elections to be held in said village of Morgan Park and said City of Chicago, respectively, and notice of said election was thereupon published in a newspaper duly authorized by statute to make publication of such notices in said County of Cook, prior to the 5th day of February A. D. 1914; that pursuant to said petition and order of the Judge of the County Court of Cook County, the question of said annexation was submitted to the voters of the City of Chicago on the 7th day of April 1914 and a certificate of the officers of said City of Chicago charged with the duties of canvassing of such votes was filed with the Clerk of the County Court on the 15th day of April 1914, that pursuant to said petition and order of the Judge of the County Court of said Cook County in question of the annexation of the village of Morgan Park to the City of Chicago was submitted to the voters of the village of Morgan Park on the 21st day of April 1914, and said question was duly carried and a certificate of the officers of said village of Morgan Park charged with the duties of canvassing of said votes was duly filed with the Clerk of the County Court on the 22nd day of April 1914, in which said certificate it appeared that a majority of the voters of the City of Chicago and of the voters of the village of Morgan Park voted for said annexation and thereupon the jurisdiction of the city of Chicago extended over

said territory of Morgan Park, according to the statute therein made and provided that thereupon the said Metropolitan State Bank
20 became and was and ever since has been a residence of the City of Chicago, subject to the jurisdiction thereof and thereafter on account of the fact that said Village of Morgan Park had ceased to exist thought the action of the people of the village of Morgan Park in extending the boundary line of said village and becoming a part of the City of Chicago, and by reason of the fact that said Metropolitan State Bank through the action of the voters of said village of said Morgan Park and the City of Chicago became and was a resident of the City of Chicago, said Metropolitan State Bank immediately became and was entitled to the enjoyment of all the privileges given to the residents of the City of Chicago and to the exercise of all the rights given to the residents of the City of Chicago and immediately became and was entitled to remove it- banking quarters from the premises No. 2347 Morgan Avenue in the City of Chicago, Cook County, Illinois, to the banking quarters No. 809 West Thirty-fifth Street in the City of Chicago, Cook County, Illinois, and there engage in and carry on the business of banking, that is to say, the business of discounting deposit, bnuying and selling exchange, loaning money on personal and real estate security and doing general banking business in accordance with its charter and the laws of the State of Illinois.

This defendant further answering denies that it is engaged in or about to engage in or if located or being located at said 809 West Thirty-fifth Street, Chicago, Illinois, it will engage in, is engaged in or has been engaged in any business contrary to the terms and provisions of its charter of the laws of the State of Illinois, but on the contrary that it has in all respects complied with all of the terms and provisions of its charter and the laws of the State of Illinois, and that if located at said 809 West Thirty-fifth street, Chicago, or any other part of the city of Chicago, it will obey and comply with all the terms and provisions of it- charter and the laws of *of* the state
21 of Illinois.

This defendant further answering states that there is no provision or provisions in the statute relating to the consolidation of territory or the annexation of cities and villages contained in the Cities and Villages Act requiring the resident or residents of territory to be annexed to a larger municipality to do or perform anything as a condition precedent to the exercise of their trade or business in the consolidated territory in the same manner and to the same extent as previously exercised or carried on in the territory occupied by them previous to annexation, nor is there any such provision or provisions in the law, ordinances and proceedings under and by which the village of Morgan Park became and now is a part of the City of Chicago.

This defendant further answering states that there is not provision or provisions in the act of the State of Illinois, entitled "An act concerning corporations with banking powers approved June 16, 1887 in force December 6th 1888 and all acts amendatory thereto, which provides or requires a resident of one municipality to forfeit any of

its rights or privileges upon becoming annexed to municipality of greater population, nor is there any provision in said act requiring any bank or banking association formally a resident of one municipality to encrease it- capital stock upon becoming by annexation or consolidation or a resident of a municipality of greater population.

The defendant further answering states in bar of said information and relief asked therein says that an act entitled "An Act concerning corporations with banking powers, approved June 16th 1887 was not submitted to the vote of the people of the regular November election in the year 1888 and adopted according to the law as
22 required under the provisions of the Constitution of the State of Illinois relative to submission to a vote of the people or the act of the General Assembly creeting corporations or associations with banking powers, to-wit, Section 5 of article 2 Constitution in that said act was not set out nor printed upon the ballot which was submitted to the people at general election following the passage of said act, held November 6, 1888, but said ballot which was submitted to the vote of the people contained only the words "For the general banking law" and "Against the General banking law," which said words were not a proper submission of said act to the vote of the people, as required by the section of the Constitution aforesaid.

And further answering this defendant states in bar of said information and the relief asked therein that that portion of section 2 of Chapter 16 being an "Act concerning corporation with banking powers, approved June 16, 1887 and alleged to have been properly submitted to a vote of the people at the regular November elcetion in the year 1888 and thereby adopted which is as follows:

"Banks or banking associations may be organized under the provisions of this act in all cities, towns and villages, with a minimum capital stock according to the population of said cities, towns and villages as follows:

In all cities, town- and villages of not exceeding five thousand inhabitant- of $25,000.00.

In all cities town-, and villages of over five thousand inhabitants and less than ten thousand inhabitants, $50,000.00.

In all cities, towns and villages of ten thousand inhabitants and less than fifty thousand inhabitants, $100,000.00.

In all cities, towns of fifty thousand inhabitants or more of $200,000.00.

is unconstitutional and void, in that said portion of said section II of said act is in violation of section II of Article 2 of the Constitution of the state of Illinois, guaranteeing that no person shall be deprived of life, liberty or property without due process of law, and is further in violation of the fifth amendment of the Constitution of the
23 United States, guaranteeing that no person shall be deprived of life, liberty or property without due process of law, that said section is in violation of section 22 of article 4 of the Constitution of the state of Illinois, which provides that the general Assembly shall not pass local or special laws.

And this defendant further answering denies that the complain-

ant is entitled to the relief, or any part thereof, in the said bill of complaint or information in equity demanded and prays the same advantage of this answer as if it had plead or demurred to the said bill of complaint or information in equity, and prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LYMAN, ADAMS & BISHOP,
Attorneys for Metropolitan State Bank.

And afterwards towit on the 23rd day of June A. D. 1915 a certain exceptions was filed in the office of the Clerk of said court in words and figures following to-wit:

24 *Exception Taken by Informant to the Insufficient Answer of the Respondent, Metropolitan State Bank, to the Informants Information in Equity.*

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court, to the April Term, A. D. 1915.

Information in Chancery for Injunction.

Gen. No., B8707.

METROPOLITAN STATE BANK, Respondent,
ats.
THE PEOPLE OF THE STATE OF ILLINOIS BY PATRICK J. LUCY, Attorney General of the State of Illinois, Informant.

First. For that the information of the informant alleges the complete organization of the respondent, Metropolitan State Bank under the State Bank act, with a capital stock of but $25,000.00 and its place of business or location the village of Morgan Park with a population less than 5,000 inhabitants prior to the date of the annexation of the said village of Morgan Park to the City of Chicago, and the answer of the respondent admits the complete organization of the Metropolitan State Bank with a capital stock of but $25,000 and *it* place of business or location the said village of Morgan Park with a population of less than 5,000 inhabitants prior to the date of annexation of said village of Morgan Park to the City of Chicago.

Second. For that the allegation contained in the answer of the respondent that—

"This defendant further answering denies that *their* is any provisions in said charter depriving this defendant of the right to move the location of its bank in the municipality in which it resides."

is merely the conclusion of the pleader, the respondent, and is
25 excepted to for insufficiency.

Third. For that the allegations contained in respondent's answer that—

"This defendant further answering states that as soon as it was authorized by James J. Brady, Auditor of Accounts of the State of Illinois, under the provisions of the act concerning corporations with banking powers approved June 16th 1887, and in force with amendments thereto on the 24th day of November, 1908, to commence business as a bank or banking association under the provision of said act, immediately thereupon and thereafter and prior to the seventh day of April, 1914, said Metropolitan State Bank at No. 2347 Morgan Avenue, in the village of Morgan Park, County of Cook and state of Illinois, engaged in business as banking association for the purpose of discounting and deposit and to buy and sell exchange, and to do a general banking business excepting the issuing of bills to circulate as money,"

is irrelevant, constitute no defense to the information and informant therefore excepts to said allegations for impertinence.

Fourth. For that the allegations contained in respondent'- answer that—

"And said Metropolitan State Bank further states that on to-wit the 6th day of January 1914, certain legal voters of the village of Morgan Park, Illinois, of the number of 750 or more desiring to extend the boundary line of said village of Morgan Park and become and be merged in and become a part of the City of Chicago, a city of greater population than Morgan Park, presented a petition to the Judge of the County Court of Cook County asking that the question of annexation of the said village of Morgan Park to the City of Chicago, in said County be submitted to the legal voters of the village of Morgan Park. That on, to-wit the 6th day of January 1914 said Judge of the County Court of Cook County pursuant to the statute in such case made and provided entered and order or decree submitting the question of the annexation of said village of Morgan Park to the City of Chicago to the voters of the city of Chicago and to the Voters of the village of Morgan Park at the next regular annual municipal election to be held in said village of Morgan Park and said City of Chicago, respectively, and notice of said election was thereupon published in a newspaper duly authorized by statute to make publication of such notices in said county of Cook, prior to the 5th day of February A. D. 1914 that pursuant to said petition and order of the Judge of County Court of Cook County the question of said annexation was submitted to the voters of the city of Chicago on the 7th day of April 1914 and a certificate of the officers of said City of Chicago charged with the duties of canvassing of such votes, was filed with the clerk of the County Court on the 15th day of April 1914 that pursuant to said petition and order of the Judge of the County Court, of said Cook County the question of the annexation of the village of Morgan Park to the City of Chicago was submitted to the voters of said village of Morgan Park on the 21st day

of April 1914, and said question was duly carried and a certificate of the officer of said village of Morgan Park charged with the duty of the canvassing of said vote was duly filed with the Clerk of
26 the County Court on the 22nd day of April, 1914, in which such certificates it appeared that a majority of the voters of the City of Chicago and of the voters of the Village of Morgan Park voted for said annexation and thereupon the jurisdiction of the City of Chicago extended over said territory of Morgan Park, according to the statute therein made and provided; that thereupon said Metropolitan State Bank became and was and ever since has been a resident of the City of Chicago, subject to the jurisdiction thereof; that thereafter on account of the fact that said Village of Morgan Park had ceased to exist through the action of the people of the Village of Morgan Park in extending the boundary line of said village and becoming a part of the City of Chicago, and by the action of the people of the City of Chicago and by reason of the fact that said Metropolitan State Bank through the action of the voters of said Village of Morgan Park and the City of Chicago became and was a resident of the City of Chicago, said Metropolitan State Bank immediately became and was entitled to the enjoyment of all of the privileges given the residents of the City of Chicago and to the exercise of all of the rights given to all of the residents of the City of Chicago, and immediately became and was entitled to remove its banking quarters from the premises No. 2347 Morgan avenue in the City of Chicago, Cook County, Illinois, to the banking quarters No. 809 West 35th street in the City of Chicago, Cook County, Illinois, and there engage in and carry on the business of banking, that is to say, the business of discounting, deposits, buying and selling exchanges, loaning money on personal and real estate security, and doing a general banking business, in accordance with its charter and the laws of the State of Illinois."

is irrelevant, constitutes no defense to the information of the informant, and the informant excepts to said allegation for impertinence.

Fifth. For that respondent alleges in its said answer that—

"This defendant further answering denies that it is engaged in or is about to engage in, or if located or being located at said 809 West 35th Street, Chicago, Illinois, it will engage in, is engaged in or has been engaged in any business contrary to the terms and provisions of its charter or the laws of the state of Illinois; but, on the contrary, that it has in all respects complied with all of the terms and provisions of its charter and the laws of the state of Illinois; and that if located at said 809 West 35th Street, Chicago, or any other part of the City of Chicago, it will obey and comply with all the terms and provisions of its charter and the laws of the state of Illinois."

is a mere conclusion of the pleader, the respondent, constitutes no defense to the information in this cause, and informant excepts to the same for insufficiency.

Sixth. For that the allegation contained in the answer of the respondent that—

"This defendant further answering states that there is no provision or provisions in the statutes relating to the Consolida-
27 tion of territory, or the annexation of cities and villages contained in the Cities and Villages Act requiring the resident or residents of territory to be annexed to a larger municipality to do or perform anything as a condition precedent to the exercise of their trade or business in the consolidated territory in the same manner and to the same extent as previously exercised or carried on in the territory occupied by them previous to annexation, nor is there any such provision or provisions in the laws, ordinances and proceedings under and by which the Village of Morgan Park became and now is a part of the City of Chicago."

is irrelevant, constitutes no defense to the information in this cause, and the informant excepts to the same for impertinence.

Seventh. For that the allegation contained in the answer of respondent that—

"This defendant further answering state that there is no provision or provisions in the act of the state of Illinois entitled "An act concerning corporation with banking powers," approved June 16, 1887, in force December 6, 1888, and all acts amendatory thereto, which provides or required a resident of one municipality to forfeit any of its rights and privileges upon becoming annexed to a municipality of greater population; nor is there any provision in said act requiring any bank or banking association formerly a resident of one municipality to increase its capital stock upon becoming by annexation or consolidation a resident of a municipality of greater population,"

is a mere conclusion of the pleader, the respondent, and informant excepts thereto for insufficiency.

Eighth. For that the allegation contained in the answer of respondent that—

"This defendant further answering states in bar of said information and relief asked therein says that an act entitled "An Act concerning corporations with Banking powers," approved June 16, 1887, was not submitted to the vote of the people at the regular November election in the year 1888 and adopted according to law as required under the provisions of the constitution of the state of Illinois relative to submission to a vote of the people of the act of the General Assembly creating corporations or associations with banking powers, to-wit, Section 5 of Article 2 of the Constitution in that said act was not set out or printed upon the ballot which was submitted to the people at the general election following the passage of said act, held November 6, 1888, but said ballot which was submitted to the vote of the people contained only the words "For the general banking law" and "Against the general banking law," which said words were not a proper submission of said act to the vote of the people, as required by the section of the constitution aforesaid,"

is irrelevant, constitutes no justification, constitutes no defense
28 to the information in this cause and informant excepts the *the* same for impertinence.

Ninth. For that the allegation contained in the answer of respondent that—

"And further answering this defendant states in bar of said information and the relief asked therein, that that portion of section 2 of chapter 16, being an "Act concerning corporations with banking powers, approved June 16, 1887, and alleged to have been properly submitted to a vote of the people at the regular November election in the year 1888, and thereby adopted, which is as follows:"

"Banks or Banking Associations may be organized under the provisions of this act in all cities, towns and villages with a minimum capital stock according to the population of said cities, towns and villages, as follows:

In all cities, towns and villages not exceeding 5,000 inhabitants of $25,000.00

In all cities towns and villages of over five thousand inhabitants, and less than ten thousand inhabitants, of $50,000.00.

In all cities, towns and villages of ten thousand inhabitants, and less than fifty thousand inhabitants, $100,000.00.

In all cities, towns of fifty thousand inhabitants or more, of $200,000.00."

is unconstitutional and void, in that said portion of said section 2 of said act is in violation of Section 2 of article 2 of the Constitution of the State of Illinois, guaranteeing that no person shall be deprived of life, liberty or property without due process of law, and is further in violation of the Fifth Amendment to the Constitution of the United States guaranteeing that no person shall be deprived of life, liberty or property without due process of law; that said section is in violation of Section 22 of Article 4 of the Constitution of the State of Illinois, which provides that the General Assembly shall not pass local or special laws,"

is irrelevant, constitutes no justification, constitutes no defense to the information in this cause, and informant excepts thereto for impertinence.

In all of which particulars of insufficiency the informant excepts to the answer of respondent, Metropolitan State Bank, as evasive, imperfect and insufficient and prays that the respondent, Metropolitan State Bank, may be compelled to put in a full and sufficient answer thereto, and in all of which particulars of impertinence the informant excepts to the said answer of the re-
29 spondent, Metropolitan State bank, as impertinent, and insists that the same ought to be expunged from the said answer.

JAMES J. BRADY,
Auditor of Public Accounts of the State of Illinois,
By PATRICK J. LUCEY,
Attorney General of the State of Illinois.

T. E. DEMPSEY,
Assistant Attorney General.

And afterwards, to wit, on the 28th day of June, A. D. 1915, the following proceedings were had and entered of record in said Court to-wit:

Circuit Court of Cook County, June Term, 1915. Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS
vs.
METROPOLITAN STATE BANK.

On motion of P. J. Lucey, Attorney General, solicitor for The People, etc., the above entitled cause is hereby set for hearing on Wednesday, July 7, at 10 A. M.

Enter:

SMITH.

And afterwards to-wit on the 7th day of July A. D. 1915 a certain Stipulation was filed in the office of the Clerk of said Court in words and figures following to-wit:

30 *Stipulation.*

Circuit Court of Cook County.

PEOPLE, etc.,
v.
METROPOLITAN STATE BANK.

The parties to the above entitled cause, by their respective attorneys, for the purpose of waiving any and all irregularities, informalities and defects in the pleadings and to confine the issues thereof to the question as to whether the annexation of the village of Morgan Park to the city of Chicago authorizes and enables the respondent lawfully to engage in the business of banking as a corporation under its charter in the city of Chicago outside of an· beyond the territory within the corporate limits of said village of Morgan Park as the same existed prior to its annexation to the city of Chicago, hereby stipulate and agree as follows:

First. That the allegations of fact (not conclusions of the pleader) contained in the answer of the respondent, Metropolitan State Bank, heretofore filed in this cause are true and the exceptions filed by the informant were and are intended to raise the question of the legal sufficiency of said facts and the answer as a defense to the information.

Second. That the exceptions heretofore filed by the informant to the answer of respondent are filed to raise the same issue of law which would be raised by the filing of a demurrer to said answer in a proceeding at law and the same legal effect is to be given to the excep-

tions to the respondent's answer as would be given to a demurrer filed to respondent's answer in a proceeding at law.

Third. For the purpose of this cause it is agreed that
31 all of the allegations of fact and charges contained in the information in this cause (not conclusions of the pleader) not denied, qualified or explained in the answer of the respondent are true as alleged, except that respondent does not admit the charge that such removal of its bank would constitute an abuse or misuse of its charter as charged in the information, nor that the State Bank act under which respondent was organized impliedly prohibits a corporation with banking powers or banks or banking associations organized under said act with a capital stock of but $25,000.00 from carrying on the business described in said section of said act—that is to say, of discount and deposit, buying and selling exchange, loaning money on personal and real security, and doing a general ban-ing business (except the issuing of bills to circulate as money) in a city with a population exceeding 5,000 inhabitants, these being the precise questions of law intended to be presented by the pleadings, and it is agreed that respondent denies these charges.

Fourth. It is further stipulated and agreed that if the court shall find and hold that the annexation of the village of Morgan Park to the city of Chicago as set up in respondent's answer constitutes no de-nse to the information, nor that any other part of said answer constitutes a defense to the information, then in that case a decree shall be entered in substance enjoining respondent from removing said bank from the place named in the permit to organize and in its articles of incorporations and charter, and from carrying on the business of banking at any other place or location, except in the manner provided by law, and especially at No. 809 West Thirty-fifth Street in said city of Chicago.

32 Fifth. The allegation or charge contained in respondent's answer to the effect that the act entitled "An act concerning corporations with banking pawers" under which respondent, Metropolitan State Bank, was organized, was not properly and legally submitted to the people for ratification as the constitution requires and is therefore not a law, is denied by the informant.

Dated this first day of July, A. D. 1915.

P. J. LUCEY,
Attorney General of the State of Illinois.

LYMAN, ADAMS & BISHOP,
Attorneys for Respondent.

And afterwards to-wit on the 16th day of July A. D. 1915 the following proceedings were had and entered of record in said Court to-wit:

At a Term of the Circuit Court, Held in and for the County of Cook, in the State of Illinois, at the Court-house, in the City of Chicago, in said County of Cook, on Wednesday, the Seventh Day of July, in the Year 1915.

Present: Hon. Thomas G. Windes, one of the judges of said court.

33 *Decree.*

In Chancery.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

This cause having come on to be heard on this day upon the information in equity herein, the answer of the respondent thereto, together with a stipulation by the parties litigant and the evidence, and having heard arguments in open court by counsel for the respective parties, and the court having duly considered the same and being fully advised in the premises, finds:

That the respondent, Metropolitan State Bank, was duly and legally served with summons herein and that the court has jurisdiction of the parties hereto and the subject matter of this suit;

The court further finds, from admission in the answer of the allegations of fact contained in the information and from admissions and agreements contained in a stipulation executed by the parties hereto by their respective counsel in this cause, of allegations of fact in both the information and answer, as follows:

First. That respondent was duly and legally organized and incorporated under and pursuant to the provisions of a statute of the State of Illinois entitled "An Act concerning corporations with banking powers," approved June 16, 1887, in force December 6, 1888, and all acts amendatory thereto, under the name "Metropolitan State Bank," with a capital stock of Twenty-five
34 Thousand Dollars, and its place of business or location the village of Morgan Park, in the county of Cook, in the State of Illinois; that on the sixth day of April, 1914, respondent caused its permit to organize and its certificate of authorization to commence business to be filed for record and recorded in the office of the recorder of deeds in said county of Cook and on the same day commenced the business of banking under its charter in said village of Morgan Park.

Second. The court further finds that at the time of the organization of respondent, Metropolitan State Bank, and at the time it commenced business, Morgan Park was a village organized and incorporated under the general laws of Illinois relating to and providing for the incorporation of cities and villages and had a population of less than five thousand inhabitants.

Third. The court further finds that after the organization of respondent, Metropolitan State Bank, and after said bank had commenced business in said village of Morgan Park under its articles of incorporation and before the commencement of this suit, such proceedings were had, pursuant to the laws of the state of Illinois in such case made and provided, that the said village of Morgan Park became and was annexed to the city of Chicago, and on or about the twenty-second day of April, 1914, said annexation became effective, and thereupon the jurisdiction of the city of Chicago extended and still extends over the territory of the said village of Morgan Park for municipal purposes.

Fourth. The Court further finds that since said annexation of the village of Morgan Park to the City of Chicago and before the commencement of this suit, respondent threatened and still intends and threatens to and will, unless restrained and enjoined by this court remove its said bank from its original place or location named
in its articles of incorporation, the village of Morgan Park,
35 and to carry on the business of banking as such corporation
at number Eight Hundred Nine West Thirty-Fifth Street
in the city of Chicago, a place other than that named in its articles of incorporation, wholly outside of and far distant from the said village of Morgan Park and the original site thereof, as alleged in the information.

Fifth. The court further finds that the village of Morgan Park, prior to its annexation to the city of Chicago and at the time of the organization of respondent, contained a population of less than five thousand inhabitants, and that at the same time the city of Chicago contained and still contains a population of more than fifty thousand inhabitants, to-wit, two million five hundred thousand.

Sixth. The court finds and holds, as a matter of law, that the city of Chicago is not the place named in the application for permit to organize said bank, the permit to organize and the certificate of authorization to commence business, and that the annexation of the village of Morgan Park to the city of Chicago did not and does not operate to enlarge the place of business of respondent named in its said application, permit and certificate so as to embrace any part of the territorial corporate limits of the city of Chicago as the same existed prior to said annexation of the village of Morgan Park and that said annexation of the village of Morgan Park to the city of Chicago constitutes no defense to the information in this suit, and is no justification for the removal of said bank from the village of Morgan Park or the original site or corporate limits thereof to number Eight Hundred Nine West Thirty-fifth Street in the city of Chicago, or to any other location in the city of Chicago outside the site or corporate limits of the village of Morgan Park as the same existed prior to its annexation to the city of Chicago.

Seventh. The court finds and holds, as a matter of law, that the village of Morgan Park and the original site thereof is the only place
in which respondent may lawfully carry on the business of
36 banking under its said articles of incorporation or charter,
and that for respondent, Metropolitan State Bank, to engage

in the business of banking at number Eight Hundred Nine West Thirty-fifth Street in the city of Chicago, or at any other location in the city of Chicago outside of the place named in its articles of incorporation or charter, namely, the said village of Morgan Park or the original site thereof, with a capital stock of less than Two Hundred Thousand Dollars would constitute a violation, abuse and misuse of its corporate and charter powers and violation of said statute under which respondent was organized and incorporated, would be in violation of its charter contract with the State of Illinois and would constitute usurpation of corporate powers.

Eighth. The court further finds and holds, as a matter of law, that the said act entitled "An Act concerning corporations with banking powers," approved June 16, 1887, in force December 6, 1888, under which respondent was organized and incorporated, is a valid and constitutional enactment and is in full force, and that the part of section 11 of said act, which classifies the cities, villages and incorporated towns of the state according to population and specifies the minimum amount of capital stock of the banks organized in cities, villages and incorporated towns in the classes so formed, respectively, is constitutional and valid.

Ninth. The court further finds and holds, as a matter of law, that nothing contained in the answer of respondent constitutes any defense in law or equity to the information in this suit and that the People of the State of Illinois are entitled to the relief prayed for in the information.

It is therefore considered, ordered and decreed by the court that the respondent, Metropolitan State Bank, be and is hereby permanently restrained and enjoined from removing its said bank from the site or corporate limits of the village of Morgan Park as the same existed at the time of the organization of said bank and prior to annexation of the said village of Moagan Park to the city of
37 Chicago, and from exercising its corporate powers and franchises at any place in the city of Chicago outside of the site or corporate limits of the village of Morgan Park as the same existed at the time of the organization of said bank prior to its annexation to the city of Chicago, and especially at number Eight Hundred Nine West Thirty-fifth Street, except by compliance with the provisions of the said act entitled "An act concerning corporations with banking powers," relating to change of place of business and increase of capital stock, and that respondent pay the costs of this suit.

To the above and foregoing order and decree of the court respondent objects and excepts and prays an appeal to the Supreme Court of the State of Illinois; and it is ordered that said prayer for appeal be and the same is allowed, upon respondent giving and filing in the office of the clerk of this court, within 60 days from the date hereof, a bond in the sum of Two Hundred ($200.00) Dollars, to be approved by the Court or the clerk thereof, conditioned for the diligent prosecution of this appeal to a final judgment in the Supreme Court, and the payment of all costs of this cause in case the decree of this court shall be affirmed.

It is further ordered that a certificate of evidence be presented to the court and filed with the clerk of this court within 60 days from the date hereof and that the certificate of evidence may be signed by any judge of this court after having the endorsement of approval thereon by solicitors for both parties.

Approved; Entered 16th day of July 1915.

THOMAS G. WINDES, *Judge.*

O. K. as to form.

LYMAN, ADAMS & BISHOP,
Solicitors for Respondent.

38 And thereupon on the same day, to-wit, on the 16th day of July A. D. 1915 the following proceedings were had and entered of record in said court to-wit:

Order.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

It is hereby ordered that the original certificate of evidence may be incorporated in the record of this cause in lieu of a certified copy thereof.

Entered i6 day of July 1915.

THOMAS G. WINDES, *Judge.*

And thereupon on the same day, to-wit, on the 16th day of July A. D. 1915 a certain Stipulation was filed in the office of the Clerk of said Court, in words and figures following to-wit:

39 *Stipulation.*

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

It is hereby stipulated and agreed by and between the parties hereto that the original certificate of evidence may be incorporated in the record prepared for the Supreme Court in lieu of a certified copy thereof.

PATRICK J. LUCEY,
Attorney General for the State of Illinois.
LYMAN, ADAMS & BISHOP,
Attorney- for Respondent.

And afterwards to-wit, on the 24th day of August A. D. 1915 a certain Appeal Bond was filed in the office of the Clerk of said Court, in words and figures following to-wit:

40 Know all men by these presents, that we, Metropolitan State Bank, as principal and Fidelity and Deposit Company of Maryland as surety of the County of Cook and State of Illinois, are held and firmly bound unto People of the State of Illinois also of the same State in the penal sum of Two Hundred Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind our successors and assigns jointly, severally and firmly, by these presents.

Witness our hands and seals this 23rd day of August, A. D. 1915.

The condition of the above obligation is such, that whereas, the said People of the State of Illinois did, on the 7th day of July A. D. 1915, in the Circuit Court of Cook County in the State aforesaid, and of the June Term thereof, A. D. 1915, recover a judgment against the above bounden Metropolitan State Bank for the costs of suit; from which said Judgment of the said Circuit Court of Cook County, the said Metropolitan State Bank has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said Metropolitan State Bank shall duly prosecute said appeal with effect, and moreover pay the amount of the costs, rendered, and to be rendered, against it in case the

said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

METROPOLITAN STATE BANK,
By JOHN B. BRENZA, *President.* [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By WILLIAM G. KRESS, [SEAL.]
Agent and Attorney in Fact.

Approved:
VICTOR P. ARNOLD, *Judge.*

41 And afterwards towit, on the 8th day of September A. D. 1915 a certain Affidavit was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

Howard F. Bishop, being first duly sworn, deposes and says that he is one of the attorneys for the respondent in the above entitled cause.

Deponent further says that the certificate of evidence was heretofore approved and filed in the above entitled cause on August 24, 1915, as appears by the register in the Circuit Court clerk's office.

Deponent further says that said certificate of evidence has been lost in the Circuit Court clerk's office and the Circuit Court Clerk is unable to find same.

HOWARD F. BISHOP.

Subsrcibed and sworn to before me this 8th day of September, 1915.

[SEAL.] LILLIAM WINSBERG,
Notary Public.

42 And thereupon on the same day, to-wit, on the 8th day of September A. D. 1915 the following proceedings were had and entered of record in said court, to-wit:

Order.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

This cause coming on to be heard, and it appearing that the certificate of evidence heretofore filed on to-wit the 24th day of August, 1915, has been lost in the files of the Circuit Court clerk's office,

It is therefore ordered that the certificate of evidence filed on this 8th day of September, 1915, may be substituted for the certificate of evidence heretofore filed herein on the 24th day of August.

Enter:

VICTOR P. ARNOLD, *Judge.*

43 And thereupon on the same day, to-wit, on the 8th day of September A. D. 1915 a certain Certificate of Evidence was filed in the office of the Clerk of said Court, in words and figures following to-wit:

At a Term of the Circuit Court Held in and for the County of Cook, in the State of Illinois, at the Court-house, in the City of Chicago, in said County of Cook, on Wednesday, the Seventh Day of July, in the Year 1915.

Present: Hon. Thomas G. Windes, on- of the Judges of said Court.

In Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

Be it remembered and certified, that on the hearing of this cause, at this term, upon the Information in Equity, respondent's answer to said Information, and the Exceptions to such answer, the following stipulation -- duly entered into and signed by both parties hereto on the hearing of this cause and duly filed, which said stipulation was in words and figures as follows, to-wit:

44 *Stipulation.*

Circuit Court Cook County. In Chancery.

No. B-8707.

PEOPLE, etc., Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

The parties to the above entitled cause, by their respective attorneys, for the purpose of waiving any and all irregularities, informalities and defects in the pleadings and to confine the issues thereof to the question as to whether the annexation of the Village of Morgan Park to the City of Chicago authorizes and enables the respondent lawfully to engage in the business of banking as a corporation under its charter in the city of Chicago outside of and beyond the territory within the corporate limits of said Village of Morgan Park as the same existed prior to its annexation to the City of Chicago, hereby stipulate and agree as follows:

First. That the allegations of fact (not conclusion of the pleader) contained in the answer of the respondent, Metropolitan State Bank, heretofore filed in this cause are true and the exceptions filed by the informant were and are intended to raise the question of the legal sufficiency of said facts and the answer as a defense to the information.

Second. That the exceptions heretofore filed by the informant to the answer of respondent are filed to raise the same issue of law which would be raised by the filing of a demurrer to said answer in a proceeding at law and the same legal effect is to be given to the exceptions to the respondent's answer as would be given to a demurrer filed to respondent's answer in a proceeding at law.

Third. For the purposes of this cause it is agreed that all of the allegations of fact and charges contained in the information in this cause (not conclusions of the pleader) not denied, qualified or explained in the answer of the respondent are true as alleged, except that the respondent does not admit the charge that such removal of its bank would constitute an abuse or misuse of its charter as charged in the information, nor that the State Bank act under which respondent was organized impliedly prohibits a corporation with banking powers or banks or banking associations organized under said act with a capital stock of but $25,000 from carrying on the business described in said Section 1 of said act—that is to say, of discount and deposit, buying and selling exchange, loaning money on personal and real security, and doind a general banking *ing* business (except the issuing of bills to circulate as money) in a city with a population exceeding 5,000 inhabitants*l* these being the precise questions of law intended to be presented by the pleadings, and it is agreed that respondent denies these charges.

45 Fourth. It is further stipulated and agreed that if the court shall find and hold that the annexation of the Village of

Morgan Park to the City of Chicago as set up in respondent's answer constitutes no defense to the information, nor that any other part of said answer constitutes a defense to the information, then in that case a decree shall be entered in substance enjoining respondent from removing said bank from the place named in the permit to organize and its articles of incorporation and charters and from carrying on the business of banking at any other place or location, except in the manner provided by law, and especially at No. 809 Thirty-fifth street in said city of Chicago.

Fifth. The allegations or charge contained in respondent's answer to the effect that the act entitled "An Act concerning corporations with banking powers," under which respondent, Metropolitan State Bank, was organized, was not properly and legally submitted to the people for ratification as the constitution requires and is therefore not a law, is denied by the informant.

Dated this first day of July A. D. 1915.

P. J. LUCEY,
Attorney General of the State of Illinois.

LYMAN, ADAMS & BISHOP,
Attorneys for Respondent.

And thereupon, the court having entered a decree herein the respondent, Metropolitan State Bank, prayed and appeal therefrom, to the Supreme Court of Illinois, which said appeal the court then and there granted, upon the said respondent filing its certificate of evidence herein within sixty days.

Which was all of the evidence heard and proceedings had upon the trial of said cause.

And inasmuch as the matters above set forth do not more fully appear of record in this suit, the respondent, Metropolitan State Bank, presents this, its certificate of evidence, and asks that the same may be signed and sealed and made a part of the record herein, which is done accordingly this 8th day of September A. D. 1915.

VICTOR P. ARNOLD, [SEAL.]
Judge of the Circuit Court of Cook County, Illinois.

Approved this 7th day of September A. D. 1915.

PATRICK J. LUCEY,
Attorney General.

46 And thereupon on the same day, to-wit, on the 8th day of September A. D. 1915 a certain Notice & Præcipe was filed in the office of the Clerk of said Court, in words and figures following, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

The Clerk of the Circuit Court will please prepare a transcript of record in the above entitled cause for use on appeal in the Supreme Court of Illinois, including in said transcript of record all documents on file and all orders entered in the above entitled cause.

LYMAN, ADAMS & BISHOP,
Attorneys for Respondent.

47 STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County. In Chancery.

No. B-8707.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Informant,
vs.
METROPOLITAN STATE BANK, Respondent.

To P. J. Lucey, Attorney for Informant, Springfield, Illinois:

You are hereby notified that on Wednesday, the 8th day of September at the hour of 10 o'clock A. M., we shall file in the office of the Clerk of the Circuit Court of Cook County the præcipe of the record in the above entitled cause, copy of which said præcipe is herewith served upon you.

LYMAN, ADAMS & BISHOP,
Attorneys for Respondent.

Received a copy of the above and foregoing notice and præcipe of the record this 3rd day of September, A. D. 1915.

P. J. LUCEY,
Attorney for Informant.

48 STATE OF ILLINOIS,
County of Cook, ss:

I, John W. Rainey, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect

and complete transcript of the record in a certain cause lately pending in said Court on the Chancery side thereof, between People ex rel. Patrick J. Lucey, etc., Informant and Metropolitan State Bank, defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 8th day of September 1915.

[SEAL.] JOHN W. RAINEY, *Clerk.*

49 *Assignment of Errors.*

And now comes appellant, the Metropolitan State Bank by Lyman, Adams & Bishop, its attorneys, and shows to the Supreme Court of the State of Illinois that in the record and proceedings in the said and foregoing cause there is manifest error:

And that the said Circuit Court erred therein to the injury of appellant and the prejudice of and against its said rights in the following particulars, to-wit:

1. Said Judgment is contrary to the law.
2. Said judgment is contrary to the evidence.
3. Said judgment is not supported by sufficient evidence.
4. The said trial court erred in granting the injunction prayed for by appellee.
5. The said trial court erred in entering this decree against appellant, the Metropolitan State Bank, in manner, form and substance as aforesaid.
6. The said decree of the trial court is contrary to Section 2 of Article 2 of the Constitution of Illinois, providing that "No person shall be deprived of life, liberty or property without due process of law."
7. The said decree of the trial court is contrary to Section 14 of Article 2 of the Constitution of Illinois stating that no law impairing the obligation of contracts shall be passed.
8. The Circuit Court's ruling and said decree are in conflict with and contrary to Section 10 of Article 1 of the Constitution of the United States providing that "No state shall pass any * * * law impairing the obligation of contracts."

50 9. The Circuit Court's ruling and said decree is in conflict with and contrary to Section 1 of the 14th amendment of the constitution of the United States providing "Nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws,"

10. Said decree is contrary to Section 22 of Article 4 of the Illinois Constitution prohibiting local or special laws.
11. The said decree of the Circuit Court is in other respects erroneous and unjust.

For all of which reason this appellant, the Metropolitan State

Bank, objects to said decree of the Circuit Court of Cook County heretofore entered and prays that the same may be reversed.

LYMAN, ADAMS & BISHOP,
Attorneys for Metropolitan State Bank, Appellant.

51 And afterwards, to-wit, on the Twentieth day of October, A. D. 1915, the same being one of the days of the said October term of Court last aforesaid, the following proceedings were by said Court had and entered of record in the words and figures following, to-wit:

No. 10300.

PEOPLE OF THE STATE OF ILLINOIS, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal Circuit Court, Cook.

And now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken and the cause having been argued orally by Howard F. Bishop for appellant is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

52 UNITED STATES OF AMERICA,
State of Illinois, ss.

At a Term of the Supreme Court Begun and Held at Springfield, on Tuesday, the First Day of February, in the Year of Our Lord One Thousand Nine Hundred and Sixteen, within and for the State of Illinois.

Present: Chief Justice William M. Farmer, Justice James H. Cartwright, Justice Orrin N. Carter, Justice Frank K. Dunn, Justice George A. Cooke, Justice Charles C. Craig, Justice Warren W. Duncan, Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered that afterward, to-wit: on the Sixteenth day of February, 1916, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 10300.

PEOPLE OF THE STATE OF ILLINOIS, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal Circuit Court, Cook.

53 October Term, 1915.

Docket No. 10300; Agenda 68.

PEOPLE OF THE STATE OF ILLINOIS, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal from the Circuit Court of Cook County.

Opinion by CARTER, *J.*:

This is an appeal from a decree of the Circuit Court of Cook County, entered July 16, 1915, enjoining the appellant, Metropolitan State Bank, from moving its bank from the site or corporate limits of the Village of Morgan Park, as the same existed at the time said bank was organized, and prior to the annexation of said village to the City of Chicago, and enjoining it from exercising its corporate powers and franchises at any place in the city of Chicago outside of said former corporate limits of said village.

Said bank was organized under the state banking law, on April 6, 1914, and was given a charter for 99 years to do business, with all the privileges of such a bank, in the village of Morgan Park. On April 22, 1914, the annexation of the village of Morgan Park to the City of Chicago became effective. Up to that time appellant had complied with all of the provisions of the banking laws.

The chief question urged on this appeal is whether the bank is violating any law in threatening to move beyond the limits of the village of Morgan Park, as the same existed prior to annexation to the City of Chicago, to some place within the limits of said City of Chicago outside said village limits, such intention not having been expressed until Morgan Park became a part of Chicago. This identical question was passed on by this Court in People of
54 the State of Illinois v. Adams State Bank, Appellant, Docket No. 10383—Agenda 126, (opinion by Cooke, J. at the present term of this Court.) In that case the bank had moved from the original limits of Morgan Park into another section of Chicago, and its right to do business was raised by an information in the nature of quo warranto. Every question raised here, except one, including the constitutionality of the bank act, and the right of

the bank to do business or exercise its corporate powers in any section of the City of Chicago, other than within the original corporate limits of Morgan Park, was argued in that case and decided adversely to appellant. The conclusion on these questions in that case must control here.

The only additional question raised here is whether a bill for injunction is the proper remedy, on the ground that the decree herein might not be susceptible of practical enforcement. No authorities are cited in support of this position. This Court has held that where a valid corporation assumes to exercise licenses or powers in excess of authority legally conferred upon it, a court of equity, upon a proper showing, has jurisdiction to interfere and restrain it. (Attorney General v. C. & E. R. R. Co., 112 Ill. 520; 22 Cyc. 873, and cited cases.) Manifestly, if appellant cannot do business or exercise any of its corporate powers or franchises in any part of the City of Chicago outside of the original limits of Morgan Park, this decree is a very practical and effective remedy to prevent its thus acting in excess of its corporate powers.

The decree of the circuit court must be affirmed.

Decree affirmed.

55 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield, on Tuesday, the First Day of February, in the Year of Our Lord One Thousand Nine Hundred and Sixteen, within and for the State of Illinois.

Present: Chief Justice William M. Farmer, Justice James H. Cartwright, Justice Orrin N. Carter, Justice Frank K. Dunn, Justice George A. Cooke, Justice Charles C. Craig, Justice Warren W. Duncan, Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit: on the 16th day of February, A. D. 1916, the same being one of the days of the said February term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

February 16th, A. D. 1916.

No. 10300.

PEOPLE OF THE STATE OF ILLINOIS, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal from Circuit Court Cook.

Error to ——.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Decree aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error:

Therefore, it is considered by the Court that the Decree of the Circuit Court aforesaid be Affirmed in all things, and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said — recover of and from the said — costs by — in this behalf expended, to be taxed, and that — have execution therefor.

56 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield, on Tuesday, the Fourth Day of April, in the Year of our Lord One Thousand Nine Hundred and Sixteen, within and for the State of Illinois.

Present: William M. Farmer, Chief Justice, Justice James H. Cartwright, Justice Orrin N. Carter, Justice Frank K. Dunn, Justice George A. Cooke, Justice Charles C. Craig, Justice Warren W. Duncan, Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit, on the Sixth day of April, A. D. 1916, the same being one of the days of the said April term of said Supreme Court the following proceedings were by said Court had and entered of record in the words and figures following, to-wit:

No. 10300.

PEOPLE OF THE STATE OF ILLINOIS, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal Circuit Court Cook.

And now on this day the Court having duly considered the petition for rehearing filed herein by appellant and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

57 *Authentication of Record.*

SUPREME COURT,
State of Illinois, ss:

I, Charles W. Vail, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of The Metropolitan State Bank, Appellant, vs. The People of the State of Illinois, Appellee, and also of the opinion of the Court rendered therein as the same now appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this First day of June, A. D. 1916.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

58 Be it remembered, to-wit, on the 22nd day of May, A. D. 1916, there was duly filed by The Metropolitan State Bank, appellant, in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. William M. Farmer, Chief Justice of the Supreme Court of Illinois, with the endorsement by the said Chief Justice upon the said petition allowing said writ of error, which document is in the words and figures as follows, to-wit:

59 Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

In the Supreme Court of Illinois.

No. 10300.

PEOPLE OF THE STATE OF ILLINOIS, by PATRICK J. LUCEY, Attorney General of the State of Illinois, Appellee,
vs.
METROPOLITAN STATE BANK, Appellant.

Appeal from Circuit Court Cook County.

Petition for Writ of Error, Assignment of Errors, and Prayer for Reversal.

Considering *themselves* aggrieved by the final decision of the Supreme Court of Illinois in rendering judgment against *them* in the above entitled cause, the said Metropolitan State Bank hereby prays a writ of error from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

And the said Metropolitan State Bank assigns the following errors in the records and proceedings of the said cause, viz:

1. The said Supreme Court of Illinois erred in affirming the said decree of the Circuit Court of Cook County.

2. The said Supreme Court of Illinois erred in not re-
60 versing said decree.

3. The said Supreme Court erred in deciding to enjoin said Metropolitan State Bank from doing business at 809 West 35th street in the City of Chicago, or any other part of said City of Chicago outside of the former site of the Village of Morgan Park.

4. The said Supreme Court erred in deciding that said Metropolitan State Bank could only continue in business within the original limits of the former Village of Morgan Park.

5. The said Supreme Court erred in denying the claim of said Metropolitan State Bank that said decree of the Circuit Court of Cook County was an impairment of contract and contrary to the "First" paragraph of "Section 10" of "Article I" of the Constitution of the United States which provides that "No state * * * shall pass any * * * law impairing the obligation of contracts."

6. The said Supreme Court erred in denying the claim of said Metropolitan State Bank that the said decree of the Circuit Court of Cook County constituted a deprivation of appellant of its said property without due process of law, contrary to Section 1 of the Fourteenth Amendment to said Constitution, which provides: "Nor shall any state deprive any person of life, liberty or property without due process of law."

7. The said Supreme Court erred in denying the claim of said

Metropolitan State Bank that said decree of the Circuit Court of Cook County constituted a denial to said appellant of the
61 equal protection of the laws, contrary to Section 1 of said Fourteenth Amendment to said Constitution, which provides: "Nor shall any state * * * deny to any person within its jurisdiction, the equal protection of its laws."

8. The said decision and judgment of the Supreme Court of Illinois constitute an impairment of the contract rights of appellant, contrary to said first paragraph of Section 10 of Article I of said Constitution.

9. The said decision and judgment of the Supreme Court of Illinois constitute a deprivation of appellant of its property without due process of law, contrary to said Section 1 of the Fourteenth Amendment to said Constitution.

10. The said decision and judgment of the Supreme Court of Illinois constitute a denial to appellant of the equal protection of the laws, contrary to said Section 1 of said Fourteenth Amendment to said Constitution.

For which errors the said Metropolitan State Bank prays that the said judgment of the Supreme Court of the State of Illinois rendered in said cause, on February 16, 1916, be reversed, and a judgment rendered in favor of the appellant, Metropolitan State Bank, and for costs.

METROPOLITAN STATE BANK,
By JOHN B. BRENZA,
Its President, Pro Se.

HOWARD F. BISHOP,
Counsel for Metropolitan State Bank.

62 STATE OF ILLINOIS,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by Metropolitan State Bank to the People of the State of Illinois, in the sum of Five Hundred dollars, with, New Amsterdam Casualty Company and John B. Brenza as surety; such bond to act as a supersedeas.

WILLIAM M. FARMER,
Chief Justice of the Supreme Court of Illinois.

Dated: May 20th, 1916.

62½ [Endorsed:] No. 10300. Supreme Court of Illinois. People of the State of Illinois vs. Mertopolitan State Bank. Petition for Writ of Error, Assignment of Errors, Prayer for Reversal. Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

63 Be it remembered that on the 22nd day of May, A. D. 1916, there was duly filed in the office of the Clerk of the Supreme Court of Illinois by Metropolitan State Bank, appellant, an original bond for writ of error from the Supreme Court of the

United States to the Supreme Court of Illinois, a copy of which bond is in the words and figures as follows, to-wit:

64 Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

Bond on Writ of Error.

In the Supreme Court of the United States.

METROPOLITAN STATE BANK, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.

Error to Supreme Court of Illinois.

Know all men by these presents: That we, Metropolitan State Bank, of Cook County, Illinois, as principal, and New Amsterdam Casualty Company of — as surety, are held and firmly bound unto the People of the State of Illinois in the sum of Five Hundred (500.00) dollars, to be paid to them, the said obligee, and for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

Sealed with our seals, and dated this 19th day of May A. D. 1916.

Whereas, the above named Metropolitan State Bank, plaintiff in error, seeks to prosecute its writ of error to the United States Supreme Court, to reverse the judgment rendered in the above entitled cause, by the Supreme Court of the State of Illinois.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said
65 writ of error to effect and answer all costs that may be adjudged if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

METROPOLITAN STATE BANK,
By JOHN B. BRENZA, *President.*
NEW AMSTERDAM CASUALTY COMPANY, *Surety,*
By CHARLES E. BENNETT,
Attorney in Fact.

The above bond approved and to operate as a supersedeas.

WILLIAM M. FARMER,
Chief Justice of the Supreme Court of Illinois.

65½ [Endorsed:] Copy. Supreme Court of the United States. Metropolitan State Bank vs. People of the State of Illinois. Bond on Writ of Error.

66 Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

No. —.
Duplicate—War Tax Paid on Original.

Power of Attorney.

New Amsterdam Casualty Company.

59 John Street, New York, N. Y.

Executive Offices: 7 St. Paul Street, Baltimore, Md.

Know all men by these presents:

That the New Amsterdam Casualty Company, by Thomas L. Purdum its Vice-President, and C. P. Brackett, Jr. its Assistant Secretary, in pursuance of a certain resolution duly passed by the Board of Directors of said Company at a meeting of that body held on the 28th day of May, 1913, a copy of which is hereto attached, does hereby nominate, constitute and appoint Charles E. Bennett of Chicago, Illinois, its true and lawful agent and attorney-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds and undertakings of suretyship. And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company, at the office of the Company, in New York City, New York, in their own proper persons.

In witness whereof, the said Thomas L. Purdum, Vice-President and C. P. Brackett, Jr. Assistant Secretary, have hereunto subscribed their names and affixed the Corporate Seal of the said New Amsterdam Casualty Company, this 19th day of April A. D., 1916.

THOMAS L. PURDUM,
Vice-President.

Attest:

C. P. BRACKETT, JR.,
Assistant Secretary.

At a meeting of the Board of Directors of the New Amsterdam Casualty Company, held at its office in the City of New York, State of New York, on the 28th day of May, 1913, the following resolution was unanimously adopted, to wit:

"Whereas, it frequently becomes necessary for a representative of the Company, to execute a bond on behalf of the Company, which, for lack of time or some other cause, it is impossible to have executed by the regularly elected officers of the Company;

Therefore be it resolved, that the President, or either of the Vice-Presidents, by and with the concurrence of the Secretary or Assist-

ant Secretary, is hereby authorized to empower any representative of the Company to execute, on behalf of the Company, any bond which the Company might execute through its duly elected officers."

I, C. P. Brackett, Jr. Assistant Secretary of the New Amsterdam Casualty Company, hereby certify that the aforegoing is a true copy taken from the records of Proceedings of the Board of Directors of the New Amsterdam Casualty Company, and is still in force.

In testimony whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the Corporate Seal of the New Amsterdam Casualty Company, this 19th day of April A. D., 1916.

C. P. BRACKETT, JR.,
Assistant Secretary.

CITY OF BALTIMORE,
State of Maryland, ss:

On this 19th day of April A. D. 1916, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came Thomas L. Purdum, Vice-President, and C. P. Brackett, Jr., Ass't Secretary, of the New Amsterdam Casualty Company, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, that they know the seal of said Corporation, that the seal affixed to the preceding instrument is such corporate seal and their signatures as such officers were duly affixed and subscribed to said instrument by the authority and direction of the said Company, that each is familiar with the handwriting of the other, and that the signatures subscribed to the foregoing instrument are genuine.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

[Seal of George E. Ijams, Notary Public, Baltimore, Md.]

GEORGE E. IJAMS,
Notary Public.

My commission expires May 6th, 1916.

67 UNITED STATES OF AMERICA,
State of Illinois, ss:

Office of the Clerk of the Supreme Court of Illinois.

Be it remembered that on the 22nd day of May, A. D. 1916, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error which is hereby attached and is in words and figures as follows, to-wit:

68 Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judiciary of the Supreme Court of the State of Illinois, Greeting:

Because, in the record and procedings, as also in the *recommendation* of the judgment of a plea which is in the said Supreme Court of the State of Illinois before you at the October Term 1915 thereof, being the highest court of law or equity of the said state in which such a decision could be had in the said suit, between People of the State of Illinois, designated as complainant and appellee, and Metropolitan State Bank, designated as respondent or appellant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened, to the great damage of said respondent and appellent,

Metropolitan State Bank, We being willing that error, if
69 any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court *of* Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States shall be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 22nd day of May in the year of our Lord one thousand nine hundred and sixteen.

[Seal of the District Court United States, Southern District Illinois.]

R. C. BROWN,
Clerk U. S. District Court,
Southern District of Illinois.

Allowed by
WILLIAM M. FARMER,
Chief Justice of the Supreme Court
of the State of Illinois.

69½ [Endorsed:] Supreme Court of the United States. Metropolitan State Bank vs. People of the State of Illinois. Writ of Error. Filed May 22, '16. Chas. W. Vail, Clerk Supreme Court.

70 *Certificate of Lodgment.*

SUPREME COURT,
State of Illinois, ss:

I, Charles W. Vail, Clerk of the Supreme Court, do hereby certify that there was lodged with me as such Clerk on the 22nd day of May, A. D. 1916, in the matter of The People of the State of Illinois, Appellee, vs. The Metropolitan State Bank, Appellant.

1. The original bond of which a copy is herein set forth.

2. A copy of the writ of error to file in my office and a copy for defendant in error, The People of the State of Illinois.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, Illinois, this First day of June, A. D. 1916.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

71 And afterwards on the 23rd day of May, A. D. 1916, a certain Citation showing service, was filed in the office of the Clerk of the Supreme Court, which Citation is in the words and figures following, to-wit:

72 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Illinois wherein Metropolitan State Bank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Illinois, this 20″ day of May, A. D. 1916.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

WILLIAM M. FARMER,
Chief Justice of the Supreme Court of Illinois.

Attest:
CHARLES W. VAIL,
Clerk of the Supreme Court of Illinois.

SPRINGFIELD, ILLINOIS, May 22nd, 1916.

I, Patrick J. Lucey, Attorney General for the State of Illinois, and attorney for the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation and enter appearance in the Supreme Court of the United States.

PATRICK J. LUCEY,
Attorney General of the State of Illinois and
Attorney for the People of the State of Illinois.

UNITED STATES OF AMERICA,
Southern District of Illinois, Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to Patrick J. Lucey, Attorney General of the State of Illinois, at Springfield, Sangamon County, Illinois, this 22nd day of May, A. D. 1916.

V. Y. DALLMAN,
U. S. Marshal,
By S. E. METCALF, *Deputy.*

Marshal's Fees $2.06.
Paid May 22, 1916.

72½ [Endorsed:] U. S. Marshal's No. 2587. Supreme Court of the United States. Metropolitan State Bank vs. People of the State of Illinois. Citation. Filed May 23, '16. Chas. W. Vail, Clerk Supreme Court.

73 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Illinois, in the City of Springfield, this First day of June, A. D. 1916.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court of Illinois.

Endorsed on cover: File No. 25,379. Illinois Supreme Court. Term No. 549. Metropolitan State Bank, plaintiff in error, vs. The People of the State of Illinois. Filed July 7th, 1916. File No. 25,379.

THE LAKE MONROE.[1]

ON PETITION FOR WRITS OF PROHIBITION OR MANDAMUS.

No. 30, Original. Argued April 21, 22, 1919.—Decided June 2, 1919.

Under the Act of June 15, 1917, c. 29, 40 Stat. 182, empowering the President, *inter alia*, to requisition private shipping for use and operation by the United States, permitting the exercise of the power through such agencies as he may determine, and providing that ships so requisitioned shall be managed, operated and disposed of as he may direct; and under the President's order of July 11, 1917, delegating those powers for exercise by the Shipping Board and Emergency Fleet Corporation, a ship in course of construction was requisitioned and completed by the Corporation, documented in the name of the United States, and operated by the Board through the Corporation and a private firm, who, as managing and operating agents of the Board, chartered her to a private company for the coastwise carriage of a private cargo of coal. While so engaged a collision occurred, and the vessel was libeled in the District Court. *Held*, that the District Court had jurisdiction to arrest the vessel, under § 9 of the Shipping Board Act of September 7, 1916, c. 451, 39 Stat. 728, providing that vessels purchased, chartered, or leased by the Board, "while em-

[1] The docket title of this case is: *Ex parte: In the Matter of the United States, Petitioner.*

ployed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein," which provision was reenacted by the Act of July 15, 1918, c. 152, 40 Stat. 900, amending the Shipping Board Act. P. 253.

It is not to be assumed that Congress intended that the power given by the Act of June 15, 1917, *supra*, should be exercised by the President arbitrarily or that the President by his order intended to vest absolute powers in the Shipping Board and Fleet Corporation, subject only to such regulations as he might from time to time prescribe. *Id.*

On the contrary, in view of the establishment of the Board and the Corporation as government agencies, broadly empowered and definitely restricted under the Shipping Act, and of the mention of that act in the Act of June 15, 1917, *supra*, it is to be presumed that Congress at least expected that those agencies would be used under the latter act, and that the President, in employing them thereunder, did so because of those powers and restrictions, already provided. *Id.*

This view is confirmed by the Act of July 15, 1918, *supra*, and the companion measure of July 18, 1918, c. 157, 40 Stat. 913, read with the House and Senate reports accompanying the bills. P. 255.

The words "purchased, chartered, or leased," in § 9, *supra*, of the Shipping Act, cover a contract for the temporary use of a vessel or its services not amounting to a demise, "charter" being employed here in a sense as broad as the definition in the Act of July 18, 1918, *supra*, defining it as "any agreement, contract, lease, or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel." *Id.*

Construing § 9 of the Shipping Act as a whole, the vessel in this case was employed "solely as a merchant vessel," though assigned to the New England coal trade when the Government was rationing the coal supply of the country as a war measure. P. 256.

Order to show cause discharged.

THE case is stated in the opinion.

Mr. Assistant Attorney General Brown, with whom *Mr. Chas. H. Weston* and *Mr. J. Frank Staley* were on the brief, for the United States.

Mr. Edward E. Blodgett, with whom *Mr. Foye M. Murphy* and *Mr. Albert T. Gould* were on the brief, for respondent.

MR. JUSTICE PITNEY delivered the opinion of the court.

Upon petition of the United States this court granted an order to show cause why a writ of prohibition or mandamus should not be issued in order to prevent the United States District Court for the District of Massachusetts, sitting in admiralty, from directing the seizure, attachment, or arrest of a steam vessel known as the *Lake Monroe*, owned and operated by the Government of the United States, to satisfy a claim of the master and part owner of the American auxiliary fishing schooner *Helena* for damages arising out of a collision between the two vessels which occurred on October 8, 1918, off the coast of Cape Cod.

A libel having been filed in the District Court in behalf of the *Helena* against the *Lake Monroe* to recover damages, and praying that process issue for the seizure and attachment of the steamship, the United States, appearing specially, filed suggestions to the effect that, as the steamer was the property of the United States and in its possession and control, the court was without jurisdiction to enforce claims against her by process.

The essential facts are as follows: The *Lake Monroe*, while in process of construction on the Great Lakes, was requisitioned and completed by the United States Shipping Board Emergency Fleet Corporation, and on completion was delivered to the United States Shipping Board for operation, and thereafter assigned by that board, through the Emergency Fleet Corporation, to the firm of William H. Randall & Company, of Boston, as operating and managing agents, that firm being a copartnership having experience in the operation of privately owned vessels for

commercial purposes. They selected the master and other officers of the vessel, put them in charge of her, and furnished her crew; and thereafter they manned, equipped, and repaired her, collected freight moneys from the consignees, and paid the expenses of manning, equipping, and supplying her, and other running expenses, and for these services they were to be paid by, and were to account for the moneys received by them to, the Emergency Fleet Corporation as the agent of the United States Shipping Board. At the time of the collision the *Lake Monroe* was loaded with coal, and operating under a charter executed by Randall & Company, as agents of the Shipping Board, to the New England Fuel & Transportation Company, a private concern in Boston; the cargo having been purchased from a private owner for private use, and the freight for its carraige paid by the Transportation Company to Randall & Company.

The District Court, conceding that the *Lake Monroe*, being a government-owned vessel, would be exempt from arrest except for the provisions of § 9 of the Shipping Board Act of September 7, 1916, c. 451, 39 Stat. 728, 730, held that, because at the time of the collision she was employed solely as a merchant vessel, by the terms of that section she was subject to arrest on process *in rem* to answer for the collision.

It is the principal contention of the Government that the Shipping Board Act has no application to the *Lake Monroe* because she was requisitioned by the President through the Emergency Fleet Corporation under the authority of other legislation, was documented in the name of the United States, and then employed by the President through the Shipping Board and the Fleet Corporation. This contention renders it necessary to review the several acts of legislation and the executive action that has been had pursuant thereto.

The Act of September 7, 1916, passed before the United

States entered the great war but when our commerce already was feeling the ill effects of the world wide shortage in shipping occasioned by that war, is entitled "An Act To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes." It created a board of five commissioners, and authorized them (§ 5) with the approval of the President, to cause to be constructed and equipped, in American shipyards or elsewhere, or to purchase, lease, or charter "vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes," and also (§ 7) to charter, lease, or sell to any citizen of the United States, any vessel so purchased or constructed.

The important § 9, in its original form, provided as follows: "Sec. 9. That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States. Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. *Such vessels while employed solely*

as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein." There followed prohibitions not necessary now to be particularly considered.

Section 11 authorized the Shipping Board to form one or more corporations under the laws of the District of Columbia for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States, the total capital stock not to exceed $50,000,000, and the Board to acquire for and on behalf of the United States not less than a majority of the capital stock. The act contained numerous provisions imposing duties upon common carriers by water, and conferring powers of regulation upon the Shipping Board.

The members of this Board were appointed by the President in December, 1916, and, having been confirmed by the Senate, were formally organized in the following month.

By the time the United States declared war, April 6, 1917, the world's merchant shipping had reached the stage of demoralization. The President, by a proclamation dated February 5, 1917, had declared an emergency, and brought into play the prohibition of one of the clauses of § 9 of the above act, against the sale, lease, or charter to a person not a citizen of the United States or the transfer to a foreign registry or flag of any vessel registered or enrolled and licensed under the laws of the United States.

Soon after the declaration of war the Shipping Board, under authority of § 11 of the above act, caused to be organized (April 16, 1917) under the laws of the District of Columbia a corporation known as the United States Shipping Board Emergency Fleet Corporation, with $50,000,000 of capital stock, all owned by the United

States. It was officered by the commissioners of the Shipping Board and their nominees, and was but an operating agency of that Board.

In this state of affairs, Congress embodied in the Urgent Deficiencies Appropriation Act of June 15, 1917, c. 29, 40 Stat. 182, a clause entitled "Emergency Shipping Fund," which conferred upon the President broad powers of control over contracts for the building, production, or purchase of ships or material, and among others the power "To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship." Another clause declared: "The President may exercise the power and authority hereby vested in him . . . through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct."

Under this authority the President made an executive order July 11, 1917, directing that the Fleet Corporation should have and exercise all power and authority vested in him by said provision, so far as applicable to the construction of vessels, the purchase or requisitioning of vessels in process of construction, and the completion thereof, and that the Shipping Board should exercise all power and authority vested in him by said provision, so far as applicable to the taking over of title or possession, by purchase or requisition, of constructed vessels or charters therein, and the operation, management and disposition of such vessels, and of all others theretofore or there-

after acquired by the United States, declaring: "The powers herein delegated to the United States Shipping Board may, in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose." It was under the authority thus conferred that the *Lake Monroe* was requisitioned while in process of construction and carried to completion by the Fleet Corporation, and thereafter operated by the Shipping Board through that corporation. She was documented in the name of the United States, and assigned to Randall & Company as operating and managing agents, and at the time of the collision was operating under a charter executed by them as agents of the Shipping Board to a private concern for carrying coal in coastwise commerce.

Reference should be made to two acts, approved respectively July 15 and July 18, 1918, the former an amendment to the Shipping Act of 1916, the latter "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes." (Cc. 152 and 157, 40 Stat. 900, 913). They were introduced as companion measures, the former as H. R. 12,100, the latter as H. R. 12,099, and proceeded *pari passu* through Congress. The Act of July 15 amended § 9 of the Shipping Act of 1916 with respect to some of its prohibitions, but reënacted almost *verbatim* the part we have quoted from that section. The Act of July 18 begins with some definitions, and among them: "The term 'charter' means any agreement, contract, lease, or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel."

In view of this legislation we regard the contention of the Government that the Shipping Act of 1916 has no application to the *Lake Monroe* as untenable. The argu-

ment adduced in support of it would cause the restrictive provisions of the Act of 1916 to operate only with respect to vessels constructed or acquired under that particular act and would render the powers conferred upon the Shipping Board and the Fleet Corporation by the executive order of July 11, 1917, absolute powers, subject to no regulation except such as the President might from time to time prescribe.

But at the time of the emergency provision of June 15, 1917, the Shipping Board had been established as a public commission, with broad administrative powers and subject to definite restrictions, and the Fleet Corporation had been created as its agency, financed with public funds. The emergency shipping legislation evidently was enacted in the expectation that the President would employ the Shipping Board and the Fleet Corporation as his agencies to exercise the new powers, for the Fleet Corporation was mentioned in the act, and it was known to be but an arm of the Board. It is not necessary to hold that Congress, while entertaining this expectation, went to the extent of restricting the President to those agencies; but it is not to be believed that they intended he should exercise the powers arbitrarily. And when in fact he designated the Fleet Corporation to exercise those powers so far as they pertained to the construction of vessels and the requisitioning of vessels in process of construction, and the Shipping Board so far as they applied to the operation, management, and disposition of vessels, it is to be presumed that he did so because of the general powers that already had been conferred upon them by law, and because they were subject to the regulatory provisions that Congress had enacted.

The provision of § 9 of the Act of September 7, 1916, that vessels purchased, chartered, or leased from the Shipping Board, while employed solely as merchant vessels, should be subject to all laws, regulations, and liabili-

ties governing merchant vessels, whether the United States were interested therein as owner or otherwise, was a most material restriction, deemed by Congress to be essential to subject them to the same duties and liabilities as privately owned merchant vessels with which they competed.

That Congress considered this provision and the other provisions of the Act of 1916 as having living force and general application after the executive order of July 11, 1917, is manifest from the amendatory Act approved July 15, 1918, while the war was at its height, and treated by Congress as an emergency war measure. See House Rep. 568 and Senate Rep. 536, 65th Cong., 2d sess.; also House Rep. 569 and Senate Rep. 535, same session, relating to the companion measure. These reports and the accompanying bills show that the Shipping Board was understood to be executing all its powers under the regulations prescribed by the Act of 1916.

The Government contends further that § 9 of that act has no application to the present case because liability is imposed thereby only with respect to vessels "purchased, chartered, or leased from" the Shipping Board, and only when "employed solely as merchant vessels"; it being insisted that the *Lake Monroe* does not come within either of these descriptions. The return however, makes it clear that at the time of the collision she was operating under a charter executed by the agents of the Board to a certain coal company; and even were it merely an agreement whereby the shippers paid a stipulated rate per ton for the cargo carried, we think that this would be a charter within the meaning of the Act of 1916. The words "purchased, chartered, or leased" indicate an intent to include a contract for the temporary use of a vessel or its services, not amounting to a demise of the ship; in short, the term "charter" was here employed in a sense as broad as the definition afterwards embodied in the Act of July 18, 1918.

We cannot accede to the suggestion that the *Lake Mon-*

roe was not employed "solely as a merchant vessel" because she was assigned to the New England coal trade, and because at that time the Government, through the Fuel Administration, was rationing the coal supply of the country. The language of § 9 "such vessels while employed solely as merchant vessels" must be read in connection with the phrase "whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein." Her service at the time was purely commercial, and she was subject by the terms of the act to the ordinary liability of a merchant vessel, notwithstanding the indirect interest of the Government in the outcome of her voyage.

We deem it clear, also, that among the liabilities designated by the section is the liability of a merchant vessel to be subjected to judicial process in admiralty for the consequences of a collision.

Order to show cause discharged and petition dismissed.